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MADELYN FAGGELLA
FIREMAN'S FUND INSURANCE vs. ONEBEACON

April 10, 2015

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1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----
5 FIREMAN'S FUND INSURANCE COMPANY,

6 Plaintiff,

Civil Action No.

7 -against-

14 CV 4718

8 ONEBEACON INSURANCE COMPANY as
9 successor-in-interest to GENERAL ACCIDENT
INSURANCE COMPANY OF AMERICA,

10 Defendant.
11 -----

12 DEPOSITION OF MADELYN FAGGELLA, a
13 Witness herein, taken by Defendant, pursuant
14 to Notice, at the offices of Esquire
15 Deposition Solutions, 1380 Broadway, New
16 York, New York, on Friday, April 10, 2015,
17 at 9:57 a.m., before DEBRA STEVENS, a
18 Certified Realtime and Registered
19 Professional Reporter and Notary Public
20 within and for the State of New York.
21
22
23
24
25



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Whereupon,

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MA D E L Y N F A G G E L L A,

4

having been first duly sworn/affirmed, was

5

examined and testified as follows:

6

EXAMINATION BY

7

MR. KING:

8

Q. Ms. Faggella, my name is Mitchell

9

King and I represent OneBeacon in this

10

litigation between OneBeacon and Fireman's

11

Fund.

12

I take it you are designated as the

13

witness on behalf of Fireman's Fund with

14

respect to its risk exposure analysis and

15

reserving. Is that correct?

16

A. Correct.

17

Q. Have you been deposed before?

18

A. Yes.

19

Q. How many times have you been

20

deposed?

21

A. Twice.

22

Q. In what sorts of actions have you

23

been deposed?

24

A. The first one was related to an

25

issue of pricing a coverage in personal auto.



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2 Q. I think you are aware we are here
3 in a lawsuit relating to the ASARCO
4 litigation. Can you tell me when you first
5 became involved in the ASARCO litigation that
6 gave rise to this particular dispute between
7 Fireman's Fund and OneBeacon?

8 A. I believe it was in 2008.

9 Q. What was your role and how did you
10 become involved?

11 A. As part of the support of the
12 run-off I work on the asbestos and
13 environmental, and so if there is a specific
14 case that Claims is working on that they need
15 actuarial support for, then they will get me
16 involved in that case. And so my role would
17 have been to help build the exposure model
18 that would determine what our projection of
19 the liabilities on the account would be to
20 the Fireman's Fund.

21 Q. Who asked you to get involved in
22 that process?

23 A. I believe it would have been Eric
24 Billeter.

25 Q. Who was Mr. Billeter or who is

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2 Mr. Billeter?

3 A. He is one of the claims managers in
4 the asbestos unit.

5 Q. Who else was involved in that
6 process starting with 2008? And if it
7 evolved over time you can try to lay that out
8 for me as well.

9 MR. SCHWARTZ: Which process?

10 MR. KING: The exposure model
11 process, the building of the exposure model.

12 A. The process generally starts by an
13 explan -- like we have a model in the
14 actuarial department that would be used to
15 develop the ground-up loss for an account.
16 So we would use that model to develop the
17 ground-up loss and then we would work with
18 Claims and counsel, both internal and
19 external generally, to take the model and put
20 into it the other assumptions we need in
21 terms of understanding any coverage issues or
22 allocation that we want to build as the next
23 step in the model after you have the ground
24 up.

25 The next step is to take that

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2 ground up and allocate it to the Fireman's
3 Fund policies. And so I would work with
4 Claims and counsel to understand how to
5 interpret what needs to be done in the model
6 to build the allocation methodology.

7 Q. Okay. Let's see if we can break
8 that down a little bit.

9 A. Okay.

10 Q. It's a lot of information.

11 So, I take it from your response
12 that the actuarial department actually has a
13 model for building the ground-up exposure.
14 Is that fair?

15 A. Correct.

16 Q. Let me start at even a more basic
17 question. When we talk about an exposure
18 model, what do you mean when you use that
19 term?

20 A. It is the model that we would use
21 to project what we think the liability is to
22 Fireman's Fund for the particular account
23 that we are analyzing.

24 Q. And the word "exposure" means the
25 potential liabilities? Is that what that

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2 means?

3 A. Correct.

4 Q. So the actuarial department has a
5 tool in place or model in place to build a
6 ground-up exposure. Is that fair?

7 A. Yes.

8 Q. And you gather whatever data that
9 you need to input into that to determine the
10 ground-up.

11 When you talk about ground-up
12 exposure, what does that mean?

13 A. The ground-up exposure is our
14 estimate of what we think the ultimate
15 liability for asbestos is going to be for the
16 account. And that would be their total
17 ultimate liability.

18 Q. "Their" being --

19 A. The account that we are analyzing.
20 So in this case it would be ASARCO. So that
21 is why it is ground up, because it is the
22 full view of our projection of the account's
23 liability, not Fireman's Fund. First we
24 develop the full ground-up, what is our
25 projection of the liability.

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2 Q. So let me just be clear. I am
3 sorry to dig too far into this, but
4 "ground-up" means what? All liabilities to
5 all insurers?

6 A. Yes.

7 Q. Or all liabilities to ASARCO?

8 A. It is the liability that we believe
9 will ultimately be ASARCO's due to their
10 asbestos exposure.

11 Q. Is that sometimes referred to as
12 "size of the problem"?

13 A. Yes.

14 Q. Now, the model that you use to
15 build this ground-up exposure, where does
16 that come from? What is that model?

17 A. It is a -- basically a frequency
18 severity model. So, the main components of
19 projecting this ground-up loss or size of the
20 problem is a projection of the future filings
21 that will be made against the account. And
22 that's the frequency component.

23 And then also the severity or how
24 much per claim is projected to be paid on
25 these future accounts. And...

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2 Q. Well, let me ask you this. Is
3 there anything proprietary about the
4 modelling that you build --

5 A. Yes.

6 Q. -- for the ground-up analysis?

7 A. Yes.

8 Q. What is the proprietary component
9 of that?

10 A. From my standpoint, the inputs
11 and -- I mean, I would say the model itself.
12 I mean, we have a proprietary relationship
13 with our consultant, and our model is
14 proprietary to our company.

15 Q. Is that information that -- there
16 has been testimony in this matter that there
17 is certain information that is not shown to
18 the reinsurers. Is that information that is
19 not shown to the reinsurers?

20 A. We don't release our models.

21 Q. Now, does that apply just to the
22 ground-up analysis that you -- "you" being
23 Fireman's Fund conducts, or does it apply to
24 other elements of the analysis, the exposure
25 analysis that comes after the ground-up

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2 piece?

3 A. So can I just state that from a
4 reinsurance perspective and auditing, I am
5 not actually involved in that. So I do not
6 know if a reinsurer comes into the office --
7 I am pretty sure we never send models,
8 including the whole analysis, which gets to
9 the Fireman's Fund liability out.

10 I don't know that it's not -- I am
11 not involved in that process to know. But
12 yes, the allocation is proprietary as well.

13 Q. There appears to be two components
14 to the process. One is the ground-up
15 allocation -- the ground-up determination of
16 the size of the problem, and then there is a
17 second piece which is how Fireman's Fund
18 further analyzes the issues in the case and
19 projects the ultimate liability and spread of
20 the potential losses to its policies. Right?

21 A. Correct.

22 Q. Now, I know from the documents that
23 you use a so-called decision tree analysis.
24 Correct?

25 A. Yes.

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2 have a sense of whether you want to press
3 forward or not, then we can confer and figure
4 out if there is a way.

5 MR. KING: Perhaps at lunch time
6 I'll see if I want to press that further.
7 Okay?

8 MR. SCHWARTZ: Yes.

9 Q. So I want to stay general. So we
10 have this ground-up analysis piece of the
11 process and then we have this allocation to
12 the policies piece of the process. Correct?

13 A. Correct.

14 Q. Is it fair to say that the overall
15 analysis of the allocation to the policies
16 using that decision tree methodology
17 represents a hybrid of a whole variety of
18 potential outcomes in the case?

19 A. Can you restate that question?

20 MR. KING: Would you repeat that,
21 please?

22 (Question read.)

23 A. The -- I believe, if I understand
24 what you are saying, that it is correct if
25 what you are saying is the decision tree

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2 itself is looking at the various issues in
3 the case because there are certain things
4 such as coverage issues that may not be
5 decided. And so, what you are looking at is
6 what are those coverage issues and what is
7 associated probabilities with them.

8 For each of the issues, you are
9 developing a scenario from the model to match
10 the issue. And then when you are saying the
11 hybrid, I believe what you may mean is you
12 are going to assign a probability to each
13 scenario and with that you are going to
14 multiply the scenarios out, combine that
15 probability to get a probability-weighted
16 outcome.

17 Q. A weighted average of some sort?

18 A. Yes.

19 Q. And what is a weighted average?

20 A. Each -- you take the scenario
21 outcome times its probability and you sum
22 that up across all of them to get what is the
23 weighted average.

24 Q. The scenario outcome is a dollar
25 figure?

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2 A. Yes.

3 Q. Now, once you have come up with an
4 exposure assessment and made a recommendation
5 to senior management, if they accept it do
6 the reserves get posted in the manner that
7 you have requested assuming it's been
8 approved?

9 A. I would say yes. I do not post
10 reserves. There is two components to a
11 reserve potentially. In this case what we
12 are doing is we are looking at a specific
13 account and determining what we believe the
14 outcome is and are trying to settle the
15 account. And so from the exposure modelling,
16 we get an allocation to the policies and the
17 claims adjustors would have used that
18 allocation to post reserves, case reserves
19 for the account.

20 Q. To your understanding would those
21 become the statutory reserves for each of
22 those respective policies?

23 MR. SCHWARTZ: Objection to the
24 form.

25 A. Your question to me is a little

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2 name who the people were who were involved or
3 heavily involved in that process?

4 MR. SCHWARTZ: For ASARCO?

5 MR. KING: For ASARCO.

6 A. Gary Iabello, Dan Kane would be the
7 internal Fireman's Fund people.

8 Q. Along with Mr. Billeter?

9 A. Along with Mr. Billeter. Outside
10 counsel that I would have worked or been in
11 meetings with would have been Cliff Hendler
12 and Patricia Connally. And I believe Ryan
13 Russell, internal counsel, would have also
14 participated in meetings.

15 Q. Mr. Russell is internal Fireman's
16 Fund counsel?

17 A. Yes. And I am not sure if Ryan --
18 but I think he was involved.

19 Q. So explain to me, in terms of
20 process, what the respective roles were of
21 the claims people and the outside counsel.

22 A. The claims people are the internal
23 company people who are actually handling the
24 claim and know the most about the case. And
25 Eric's area specializes in the DJ's.

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2 So, they would be the ones who are
3 working to understand the coverage issues.
4 And they would work with outside counsel to,
5 you know, identify the coverage issues,
6 understand the coverage issues, follow the
7 case through in terms of the coverage issues
8 and give the inputs that would be needed for
9 modelling in terms of what the probabilities
10 are associated with each of those issues.

11 Q. We'll see as we come to some of the
12 documents in a few minutes that there are
13 various probabilities of outcome in
14 percentages. Would that information have
15 come from counsel?

16 A. I think counsel and claims may have
17 some input as well, but I would get that
18 information from them, yes.

19 Q. So you would use the information
20 they provided you --

21 A. Yes.

22 Q. -- to populate the model, the data
23 in the model?

24 A. Correct.

25 Q. What was your specific role in the

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2 process so I can see how it all fits
3 together?

4 A. So, I would be the one that would
5 be interpreting the information of the model
6 into the actual model. So, building the
7 model itself and taking the probabilities and
8 the outcomes from the model and doing the
9 math to get to the weighted outcome.

10 Q. When you say you do the math, are
11 you putting things into spreadsheets, or are
12 you actually doing more than that?

13 A. No. It's an Excel-based model.

14 Q. So you populate a model with
15 information and you tell them sort of what
16 information you need to build the elements of
17 the model that you are working on?

18 A. Correct. They are telling me what
19 the coverage issues are, and I am going to
20 take those and build the model around them
21 and then discuss with them to make sure that
22 I am interpreting what they are asking me to
23 do correctly in the model.

24 Q. This is Defendant's 23. This is a
25 document previously marked as Defendant's

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2 these to be the three Fireman's Fund policies
3 that were at issue in the ASARCO litigation,
4 the asbestos litigation?

5 A. Yes.

6 Q. Turn to page 10, please.

7 I am sorry. Let's turn back to
8 page 9, please. It's captioned "FFIC's Key
9 Coverage Issues."

10 You testified earlier that the
11 attorneys and claims people would assess
12 coverage issues and give you a percentage
13 likelihood of certain things happening in
14 connection with coverage issues that were in
15 the case. Is this a listing of the types of
16 issues that were ultimately applied to the
17 analysis?

18 A. Yes.

19 Q. Let me ask to you turn to the next
20 page, which is 10. The second to last bullet
21 point there is captioned "Exhaustion." "Can
22 ASARCO demonstrate exhaustion of all
23 underlying insurance."

24 Do you see that?

25 A. Yes.

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2 Q. Do you understand what that means?

3 A. It is a question as to whether
4 policies underlying higher layers, as our
5 policies are, have exhausted.

6 Q. By exhausted, does that mean pay
7 the limits?

8 A. Yes, I think.

9 Q. Did you ever look at -- in the
10 course of your work on this material, this
11 analysis, did you ever look at the Fireman's
12 Fund policy wordings, the actual policies?

13 A. Me, personally?

14 Q. Yes.

15 A. No.

16 Q. So you never reviewed the terms and
17 conditions of the policies or anything like
18 that?

19 A. No.

20 Q. You relied on counsel for
21 purposes of determining what --

22 A. Yes.

23 MR. KING: Strike that.

24 MR. SCHWARTZ: You should let him
25 finish the question before you answer.

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2 A. Yes.

3 Q. Can you tell me what this is,
4 please?

5 A. This is a page that displays how
6 the final settlement that was reached with
7 ASARCO was allocated to the policies, and
8 that allocation follows what we have done in
9 our exposure analysis that is on page 58.

10 And in this exhibit here a scenario
11 was selected that was considered to be a
12 likely outcome, and then followed the
13 weighting that we gave to the various size of
14 the problem, so the 482 at 70 percent and the
15 billion at 30 percent.

16 Q. Let's go back. Slow down because
17 now you are into some heavy sledding here.

18 A. Heavy what?

19 Q. Heavy sledding. It's a northern
20 term. You propel through snow on blades.
21 Sledding.

22 A. Okay.

23 MR. SCHWARTZ: Not often done in
24 San Francisco.

25 MR. KING: Sorry to be parochial.

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2 I apologize.

3 THE WITNESS: I think you are
4 telling me I was going through it fast maybe.

5 MR. KING: You got it.

6 Q. Let me back up. Let's stop a
7 moment but I want to recap a few things.
8 Let's go back to the page 58 you were just
9 talking about. This is modelled off of an
10 assumption that the payout would be how much
11 money? That the total payout would be how
12 much?

13 A. The total payout of who?

14 Q. Under your policies. The total
15 payment under your policies is modelled at
16 page 58, right?

17 A. Our estimated payout. Yes.

18 Q. So if we were to look at the model
19 that is built off the \$482 million and we
20 look at the bottom, the weighted total, we
21 come to 19.9, 19.9, 16.8?

22 A. Correct.

23 Q. For a total of 56.6. So that is
24 modelled off of that much money, which
25 includes a payment for defense cost.

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2 Correct?

3 A. Correct.

4 Q. And that is on a nominal basis?

5 A. Correct.

6 Q. Then if you go to the right you
7 have got the present value of that?

8 A. Correct.

9 Q. If you go down to the next one, we
10 have the same modelling done on a weighted
11 average basis but using a bigger number, and
12 the number pops a little bit because of some
13 exposure to the bottom policies based upon a
14 potential pro rata outcome. Is that fair?

15 MR. SCHWARTZ: Objection to form.

16 A. Can you restate the very beginning
17 of that?

18 MR. KING: Can you try to read it
19 back, please?

20 (Record read.)

21 A. Okay. Yes. These are the policy
22 allocations of what we saw in 57 --

23 Q. Page 57?

24 A. Page 57.

25 Q. I am just making sure it is clear

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2 on the record. You are referring to Bates
3 page 57?

4 A. Yes.

5 And so this first box, yes, that
6 line saying "weighted total" is the weighted
7 total when we ran the scenarios at the 482
8 for each of the individual policies. And
9 this box here is the policy outcomes at a
10 billion dollars.

11 Q. Okay. So then we turn to this last
12 page, and I will walk through it a little
13 slower. I appreciate you being responsive.

14 A. Yes.

15 Q. So you picked a single scenario
16 that you had developed; right?

17 A. I was given direction by Claims of
18 what -- how to allocate the settlement. Our
19 general procedure for allocating settlements,
20 if they are different than the exposure based
21 actual outcome, is to use the information
22 from the exposure based outcome and to -- in
23 this case we selected one particular
24 scenario.

25 So you want to give consideration

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2 part of the probability analysis; right?

3 A. That is a scenario that we
4 modelled. And what would happen if these
5 claims were being settled in a tort system
6 environment claim by claim, then one of the
7 procedures of how those claims being
8 submitted in the tort environment, claim by
9 claim, is to allocate to the carriers on a
10 pick and spike basis with reallocation.

11 Q. As part of your work in modelling,
12 were you ever asked to consider the
13 possibility that the Fireman's Fund insurance
14 policies required that there be full payment
15 by the underlying carriers before there was
16 exhaustion?

17 A. The modelling itself takes into
18 consideration that premise because we are
19 allocating the results to the entire coverage
20 chart. And so, our policies from the
21 modelling would not be triggered until we
22 have filled up the coverage chart in a
23 horizontal or vertical way to get to us.

24 So if we are triggered in a
25 scenario, that means that what was underneath

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2 us had to exhaust by the ground-up that was
3 being sent through the coverage chart.

4 Q. When you say "had to exhaust by the
5 ground-up," do you mean had to exhaust by
6 virtue of actual payments by the insurers or
7 by there being sufficient asbestos exposure
8 for there to be that large a number?

9 A. There is sufficient asbestos
10 exposure to be large enough to have exhausted
11 those policies.

12 Q. In other words, you are referring
13 to a size-of-the-problem type of situation?

14 A. Yes.

15 Q. My question was slightly different.
16 It is very simple. Were you ever asked to
17 consider as part of your modelling or
18 analysis what would happen if the Fireman's
19 Fund policies actually required payment by
20 the insurer, not just by virtue of size of
21 the problem; payment by the insurers under
22 you in order for there to be exhaustion?

23 A. I mean, these are the scenarios
24 that I modelled, which would have assumed
25 that the ground-up dollars were going through

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the coverage chart. So, I think the answer
is no.

(Recess.)

MR. KING: Ms. Faggella, thank you
for your time and patience. No further
questions.

THE WITNESS: Thank you.

MR. SCHWARTZ: Nothing for me. Can
we just state on the record --

MR. KING: I will not be pressing
for the proprietary material.

MR. SCHWARTZ: Thank you.

(Time noted: 2:21 p.m.)

Subscribed and sworn to
before me this day
of , 2015.

Notary Public